

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JERAL A. PEOPLES,

Petitioner,

v.

Case No. 2:10-cv-49
HON. R. ALLAN EDGAR

GARY CAPELLO,

Respondent.

/

MEMORANDUM AND ORDER

Jeral A. Peoples, a Michigan state prisoner in the custody of the Michigan Department of Corrections, brings a petition for writ of habeas corpus under 28 U.S.C. § 2254. Peoples challenges the validity of his Michigan conviction for assault with intent to do great bodily harm less than murder in violation of M.C.L. § 750.84. He was convicted on October 7, 2003, pursuant to his plea of nolo contendere and was sentenced to a term of six months to ten years imprisonment.

On June 28, 2012, Magistrate Judge Greeley submitted his report and recommendation. [Court Doc. No. 135]. It is recommended that the habeas petition be denied and dismissed with prejudice, and that a certificate of appealability be denied under 28 U.S.C. § 2253(c)(2). There is a procedural default of the claims asserted in the habeas petition, and Peoples has failed to meet his burden of showing cause and prejudice to excuse and overcome the procedural default. It is further recommended that related motions by Peoples [Court Doc. Nos. 119, 123, 125, 129, 131] be denied.

Petitioner Peoples raises objections to the report and recommendation. [Court Doc. Nos. 137, 138]. After reviewing the record *de novo*, the Court concludes that his objections are without merit

and do not preclude the dismissal of the habeas petition for the reasons expressed in the Magistrate Judge's well reasoned report and recommendation. The objections [Court Doc. Nos. 137, 138] are DENIED. The Court ACCEPTS and ADOPTS the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). The habeas petition brought under 28 U.S.C. § 2254 is DENIED and DISMISSED WITH PREJUDICE.

If petitioner Peoples files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be DENIED pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) for the same reasons expressed in the report and recommendation. Reasonable jurists could not find it debatable that each of the claims Peoples pleads and asserts in his habeas petition are properly dismissed based on the ground of procedural default. Moreover, Peoples fails to show that his nolo contendere plea in the Michigan court was not a knowing and voluntary plea.

The petitioner's motion to produce the entire court file for photocopying, motion to produce transcripts, and motions for appointment of counsel [Court Doc. Nos. 119, 123, 125, 129, 131] are all DENIED. The petitioner's request for an evidentiary hearing [Court Doc. No. 137] is DENIED.

A separate judgment will enter.

SO ORDERED.

Dated: 8/2/2012

/s/ R. Allan Edgar

R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE